

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #8	CCRB Case #: 202006650	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 8:00 PM, Saturday, 05/30/2020 8:08 PM	Location of Incident: 5th Avenue and East 16th Street; 13th Precinct stationhouse	Precinct: 13	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 10/02/2020 6:44 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 10/02/2020 6:44 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. Officers			
3. POM Kevin Agro	08054	947964	SRG 3
4. CPT Christophe Treubig	00000	935869	PBMS
5. POF Geidy Vicente	17738	952322	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alex Lugo	16119	959773	028 PCT
2. POM Stephen Odriscoll	19565	961979	HARBOR
3. POF Belkin Garcia	01435	952761	013 PCT
4. POF Lily Graham	03330	966080	013 PCT
5. POM Matthew Contant	09703	960391	006 PCT
6. DT3 Wojciech Czech	6739	954684	NARCBMN
7. POF Olive Houston	07762	949830	028 PCT
8. DC Salvatore Comodo	00000	882370	PBMS
9. DI Elias Nikas	00000	902105	PBMS
10. SGT Mingyun Cheung	03788	942769	013 PCT
11. POF Maureen Carey	20116	958370	006 PCT
12. DI Robert Ohare	00000	916960	MTS PCT
13. POM Felix Paulino	07858	962002	028 PCT
14. SGT Michael Ciota	04123	936356	SRG 3
15. LT Richard Mack	00000	916095	SRG 4
16. POM William Myhre	14318	966238	013 PCT
17. POM Louis Caputo	09330	954601	009 PCT
18. SGT Eric Luk	05186	933951	TRN BUR

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Agro	Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro used physical force against § 87(2)(b)	
B.POM Kevin Agro	Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro used physical force against § 87(2)(b)	
C.POM Kevin Agro	Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro used physical force against individuals.	
D.POM Kevin Agro	Discourtesy: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro spoke discourteously to § 87(2)(b)	
E.POM Kevin Agro	Discourtesy: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro spoke discourteously to § 87(2)(b)	
F.POM Kevin Agro	Discourtesy: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro spoke discourteously to individuals.	
G. An officer	Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, an officer struck § 87(2)(b) with a baton.	
H. Officers	Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, officers hit § 87(2)(b) against a vehicle.	
I.CPT Christophe Treubig	Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Captain Christopher Treubig hit § 87(2)(b) against a vehicle.	
J. An officer	Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, an officer hit § 87(2)(b) against a vehicle.	
K.POF Geidy Vicente	Discourtesy: At the 13th Precinct stationhouse, Police Officer Geidy Vicente spoke discourteously to § 87(2)(b)	
L.POF Geidy Vicente	Force: At the 13th Precinct stationhouse, Police Officer Geidy Vicente used physical force against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint via the CCRB's online website on October 2, 2020.

On May 30, 2020, at approximately 8:00 PM, § 87(2)(b) and § 87(2)(b) were in the vicinity of Union Square in Manhattan. Large numbers of civilians were in the area protesting police brutality in response to the death of George Floyd. At approximately 8:00 PM, § 87(2)(b) and § 87(2)(b) were in a crowd of civilians within the roadway on 5th Avenue near East 16th Street, where they encountered SRG bicycle officers, including PO Kevin Agro of SRG 3. Holding his bicycle in front of him, PO Agro pushed § 87(2)(b), § 87(2)(b), and other, unidentified protesters (**Allegations A through C: Force, § 87(2)(g)**). PO Agro said to § 87(2)(b), § 87(2)(b), and other protesters, "Go on the fucking sidewalk" (**Allegations D through F: Discourtesy, § 87(2)(g)**). While officers attempted to move protesters out of the street, an unidentified officer struck § 87(2)(b) on the forehead; she believed she was struck with a baton but did not see who struck her (**Allegation G: Force, § 87(2)(g)**). Officers then arrested § 87(2)(b) and § 87(2)(b) among numerous other arrestees. During the course of the arrests, officers pushed § 87(2)(b) against a parked vehicle (**Allegation H: Force, § 87(2)(g)**), and Captain Christopher Treubig of Patrol Borough Manhattan South and another, unidentified officer pushed § 87(2)(b) against a parked vehicle (**Allegations I and J: Force, § 87(2)(g)**).

§ 87(2)(b) and § 87(2)(b) were transported to the 13th Precinct stationhouse in an NYPD van. Upon arrival at the stationhouse, PO Geidy Vicente of the 28th Precinct allegedly said to § 87(2)(b) "Get the fuck up," and, "We're used to this type of shit" and allegedly dragged her into the stationhouse (**Allegation K: Discourtesy, § 87(2)(g)**; **Allegation L: Force, § 87(2)(g)**).

EMTs then responded to the stationhouse and transported § 87(2)(b) to § 87(2)(b). From there, she was transported to One Police Plaza, where she was released with a Desk Appearance Ticket. § 87(2)(b) was transported from the 13th Precinct stationhouse to One Police Plaza, and then to the 5th Precinct stationhouse. There, her arrest was voided, and she was released.

The investigation obtained BWC videos from numerous officers, as well as cell phone video recorded by § 87(2)(b), § 87(2)(g), § 87(4-b)

This case was reassigned from Inv. Matthew Corwin to Inv. Griffin Sherbert on May 11, 2021, and then to Inv. Samuel Ross on June 6, 2021.

Findings and Recommendations

Allegation (A) Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro used physical force against § 87(2)(b)

Allegation (B) Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro used physical force against § 87(2)(b)

Allegation (C) Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro used physical force against individuals.

§ 87(2)(b) and § 87(2)(b) stated that there was a high density of protesters in the street on 5th Avenue between East 15th Street and East 16th Street. A group of SRG officers on bicycles arrived at that intersection. § 87(2)(b) stated that these officers exited a van and issued verbal orders for civilians to clear the roadway. § 87(2)(b) and § 87(2)(b) then described SRG officers using their bicycles to push civilians out of the street. PO Agro, nearest to them, used his bicycle to push them

and other protesters. PO Agro's bicycle made contact with § 87(2)(b)'s legs and torso, and with § 87(2)(b)'s legs, but did not cause any injury.

§ 87(2)(b) recorded a cell phone video capturing this portion of the incident (Board Review 01). The first 15 seconds of video show § 87(2)(b) recording from a position in the roadway. Other civilians stand in the roadway and officers attempt to make space for a city bus to pass. At the 1 minute 30 second mark, at the intersection of 5th Avenue and East 16th Street, § 87(2)(b) and other protesters stand in the roadway while officers try to make space for an NYPD van, with lights and sirens activated, to pass. SRG bicycle officers wearing fluorescent shirts appear in the video at 1 minute 55 seconds. PO Agro is among them. He approaches § 87(2)(b) and other civilians, repeatedly saying, "Get back," as officers at his sides advance with him. He moves his bicycle forward one step at a time. PO Agro then repeatedly instructs civilian to move onto the sidewalk. At 2 minutes 34 seconds, § 87(2)(b) says, "You're literally pushing me." The relevant portion of video ends at the 2 minute 45 second mark, when officers begin to make arrests.

PO Agro stated that throughout the day in question, he and his SRG bicycle team moved around upper Manhattan at the instruction of their supervisors. Arriving at 5th Avenue and East 16th Street, PO Agro observed approximately two hundred protesters in the intersection, and he estimated that there were thousands more in the area. Some protesters threw objects at police officers, and a glass bottle exploded at PO Agro's feet. In response to the crowd in the intersection, PO Agro and other officers formed a mobile barrier with their bicycles and ordered protesters back. If the protesters did not move, officers forced individuals back, out of the street. PO Agro stated he had been trained to move individuals out of the street, but he did not use his bicycle to strike anyone, and he did not recall using any force.

PO Agro recorded a BWC video at the location in question, but the video did not begin until officers began making arrests, and the video did not capture the interactions in question (Board Review 02).

PO Agro reviewed § 87(2)(b)'s cell phone video during his CCRB interview. In response, he stated that he and other officers were moving civilians out of the roadway in order to make space for the marked NYPD van with lights and sirens activated, which may have been responding to an unknown emergency. Civilians are not allowed to obstruct vehicular traffic, and this was the reason for PO Agro moving civilians out of the street. Additionally, he stated that there was space for the civilians to move back and that he did not understand why they refused to do so.

Per New York State Penal Law 240.20, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she obstructs vehicular or pedestrian traffic (Board Review 03).

Additionally, per NYPD Patrol Guide Procedure 221-01 (Force Guidelines) (Board Review 04), force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances.

§ 87(2)(b)
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§ 87(2)(g)

Allegation (D) Discourtesy: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro spoke discourteously to § 87(2)(b)

Allegation (E) Discourtesy: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro spoke discourteously to § 87(2)(b)

Allegation (F) Discourtesy: At the intersection of 5th Avenue and East 16th Street in Manhattan, Police Officer Kevin Agro spoke discourteously to individuals.

§ 87(2)(b) testified that PO Agro said, “Get on the fucking sidewalk,” and § 87(2)(b) recalled PO Agro saying, “Get the fuck out of the way.”

§ 87(2)(b)'s cell phone video shows, at the 2 minute 43 second mark, that PO Agro said, “Go on the fucking sidewalk” (Board Review 01).

PO Agro confirmed that he used profanity while issuing commands and stated that he did so for emphasis and because it was a dangerous situation: civilians were throwing objects and he needed to create space for the above-mentioned police van to pass.

According to NYPD Patrol Guide Procedure 200-02 (Board Review 07), police officers must treat every citizen with compassion, courtesy, professionalism, and respect. However, according to the ruling in DAO-DCT case #2015-15012 (Board Review 08), an officer's use of profanity is excusable in the context of a dynamic situation over which the officer is trying to gain control.

§ 87(2)(g)

Allegation (G) Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, an officer struck § 87(2)(b) with a baton.

§ 87(2)(b) stated that while she was in a crowd of protesters in the roadway at the intersection of 5th Avenue and East 16th Street, she looked to her left briefly and then felt a strike to the right side of her head. § 87(2)(b) did not see who struck her on the head. § 87(2)(b) believed that she had been struck with a police baton because it felt as though a hard object struck her on the head. § 87(2)(b)'s forehead immediately began to swell, she felt shaky, and her vision blurred.

§ 87(2)(b) stated that as § 87(2)(b) was yelling to advancing police officers that they could not move because they were surrounded by a dense crowd, an officer, who stood behind the officers with bicycles, reached over the line of bicycle officers and swung his baton downward, striking § 87(2)(b) on the head. § 87(2)(b) described this officer as a male of average height and build and wearing a standard navy-blue NYPD uniform. She could provide no other detail.

None of the BWC videos obtained by the investigation captured any officer striking § 87(2)(b) with a baton or captured § 87(2)(b) at the relevant moments. As noted above, PO Agro's BWC began recording after the interactions in question. BWC videos recorded by PO Olive Houston of the 28th Precinct and PO William Myhre of the 13th Precinct, however, captured § 87(2)(b) complaining during transport that she had been struck on the head (Board Review 09 and 10). Further, PO Houston's BWC video shows that when § 87(2)(b) arrived at the 13th Precinct stationhouse, she had significant swelling on her forehead (also Board Review 09; 5 minutes 40 seconds).

§ 87(2)(b)'s cell phone video did not clearly capture an officer striking her with a baton (Board Review 01). However, per § 87(2)(b)'s and § 87(2)(b)'s statements, such a strike would have occurred between 2 minutes 45 seconds and 3 minutes 5 seconds. The camera moves and the images are largely blurred between these time stamps. When advanced frame-by-frame, the video shows, at 2 minutes 51 seconds, an officer swinging a baton downward in § 87(2)(b)'s general direction. (Using VLC player software, one can advance frame-by-frame using the "E" key.) That officer's appearance is obscured by both a face mask and a helmet with a face shield, and the officer's name and shield number are not visible in the video. Further, it is unclear whether this was the baton strike in question; the baton appears to swing down to § 87(2)(b)'s left, but the position of her head is not visible in the video.

§ 87(2)(b)'s cell phone video shows that PO Agro was adjacent to § 87(2)(b) at the time of the reported baton strike. However, PO Agro did not recall witnessing any officer strike any civilian with a baton. He was shown § 87(2)(b)'s cell phone video, including the images of an officer swinging their baton downward, but he did not recall witnessing this. Further, he could not identify the officers appearing near him in the video other than Lt. Richard Mack of SRG 4. Lt. Mack appeared behind PO Agro at the 2 minutes 4 seconds mark of the video, at least thirty seconds before the reported strike, and Lt. Mack wore a fluorescent SRG uniform, not a standard navy-blue uniform.

PO Alex Lugo of the 28th Precinct appears in § 87(2)(b)'s video at 2 minutes 23 seconds. He stands in front of § 87(2)(b). However, PO Lugo stated that he did not recall the incident in question. He denied striking any civilian with a baton or witnessing any other officer do so. PO Lugo was unable to identify any other officer appearing in the video, except that he believed the officer visible over his left shoulder at 2 minutes 26 seconds might be his partner, PO Paulino. PO Paulino wore a navy-blue uniform but did not have a face mask over his face like the baton-swinging officer described above, and he did not appear near § 87(2)(b) in the video at the time of the reported baton strike.

Appearing in the video at 2 minutes 58 seconds is another apparently male officer wearing a navy-blue uniform, with a face mask, and holding an extended asp. That officer's name and shield number are blurred and illegible in the video. § 87(2)(g)

§ 87(2)(b) The officer in question may wear 28th Precinct collar brass. Only one officer assigned to the 28th Precinct was a likely match for the officer in question: PO Andy Payero (Board Review 11 for his service photo). However, PO Payero does not appear on the relevant 28th Precinct roll call (Board Review 12), he

recorded no BWC video on the date in question (Board Review 13), and his memo book indicates that he was not working on that date (Board Review 14).

§ 87(2)(b)'s video also captured Sgt. Mingyun Cheung of the 13th Precinct appearing immediately adjacent to § 87(2)(b) at the 3 minute 3 second mark. Sgt. Cheung acknowledged that he was next to § 87(2)(b) in the crowd but denied striking any civilian with a baton or witnessing any officer do so. He also could not identify other officers in the crowd near § 87(2)(b).

§ 87(2)(b)'s arrest was assigned to PO Stephen O'Driscoll of the NYPD's Harbor Unit (6th Precinct as of the date of this incident). PO O'Driscoll stated that he did not witness § 87(2)(b)'s arrest and did not interact with her before meeting her at One Police Plaza later that evening. He denied having witnessed any officer strike § 87(2)(b) with a baton. Further, his BWC video shows that he was not in the crowd where § 87(2)(b) was reportedly struck with a baton.

Captain Christopher Treubig of Patrol Borough Manhattan South apprehended § 87(2)(b) immediately adjacent to § 87(2)(b) shortly after the reported baton strike. Captain Treubig did not recall this specific incident and explained that he was present for dozens of NYPD protest responses during the days before and after May 30, 2020. Captain Treubig did not recall witnessing any officer strike a female on the head with a baton during the protest in question, and he did not recall learning about any civilian having been struck in the head with a baton.

Note that the investigation received negative results for any UF-49 (Unusual Occurrence Report) pertaining to this incident (Board Review 15) and negative results for any Medical Treatment of Prisoner Report or Threat, Resistance, Injury report pertaining to § 87(2)(b) (Board Review 16 and 17).

§ 87(2)(g)
[REDACTED]

Allegation (H) Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, officers hit § 87(2)(b) against a vehicle.

Allegation (I) Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, Captain Christopher Treubig hit § 87(2)(b) against a vehicle.

Allegation (J) Force: At the intersection of 5th Avenue and East 16th Street in Manhattan, an officer hit § 87(2)(b) against a vehicle.

§ 87(2)(b) stated that as she was being arrested, an officer pulled her arms behind her back and "slammed" her torso against the hood of a parked vehicle. Likewise, § 87(2)(b) stated that when officers pulled her arms behind her back, they pushed her forcefully against a parked vehicle, causing her head to strike the vehicle.

Both arrests were captured on BWC.

A BWC video recorded by PO Matthew Contant of the 6th Precinct shows § 87(2)(b) and § 87(2)(b) being arrested beginning at the 40 second mark (Board Review 18). § 87(2)(b) – a Hispanic

female who wears fluorescent gloves – appears on the left side of a parked sedan. Two officers – Captain Treubig and a second, unidentified officer – are positioned behind § 87(2)(b) and attempt to handcuff her. § 87(2)(b) appears to briefly struggle against the officers by tensing and pushing away from the vehicle. The officers push her down against the vehicle, and it appears that her head makes contact with the vehicle’s windshield (Board Review 27 – still image from the 43 second mark of PO Contant’s BWC video). The portion of video in question can be viewed frame-by-frame in VLC by pressing the “E” key. § 87(2)(b) then goes out of sight. Immediately afterward, two unidentified officers push § 87(2)(b) – a black female wearing a white t-shirt and black spandex shorts – against the hood of the same vehicle.

Another BWC video, recorded by Sgt. Cheung, captured the arrests (Board Review 19). At 9 minutes 55 seconds, Captain Treubig, in the lower left corner of the video frame, takes hold of § 87(2)(b)’s shoulders from behind. § 87(2)(b) attempts to shake Captain Treubig off and pulls away from him. Immediately afterward, § 87(2)(b) runs and collides with Sgt. Cheung. § 87(2)(b) goes out of sight briefly and reappears, pushed against the hood of a parked vehicle.

As noted above, Captain Treubig did not recall this specific incident. He stated that he was involved in dozens of NYPD protest responses during the days before and after May 30, 2020. He did not recall ever pushing an individual against a vehicle to effect an arrest. During Captain Treubig’s CCRB interview he was shown the same portion of PO Contant’s BWC video described above. His attention was directed to the white-shirted officer apprehending an individual wearing fluorescent gloves. This portion of video was also played at half speed. However, the video did not refresh Captain Treubig’s recollection of arresting § 87(2)(b).

The investigation was unable to identify the other officers involved in apprehending § 87(2)(b) and § 87(2)(b). Their names and shield numbers are not legible in the BWC videos capturing the arrests, and no officer interviewed for this complaint positively identified them.

NYPD Patrol Guide Procedure 221-01 (Force Guidelines) (Board Review 04) states that an officer may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody, and further, that any application or use of force must be reasonable under the circumstances.

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Allegation (K) Discourtesy: At the 13th Precinct stationhouse, Police Officer Geidy Vicente spoke discourteously to § 87(2)(b).

Allegation (L) Force: At the 13th Precinct stationhouse, Police Officer Geidy Vicente used physical force against § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) both testified that upon arrival outside of the 13th Precinct stationhouse, § 87(2)(b) was dizzy and unable to stand. PO Vicente approached and said, “Get the fuck up. You won’t be babied here. Let’s go.” § 87(2)(b) also alleged that PO Vicente said to § 87(2)(b).

“We’re used to this type of shit.” § 87(2)(b) then described PO Vicente “dragging” her into the stationhouse, although § 87(2)(b) did not clarify precisely what she meant by this.

PO Vicente did not recall the interactions in question. She did not recall bringing § 87(2)(b) into the stationhouse, using profanity toward § 87(2)(b) or using physical force against § 87(2)(b)

PO Vicente did not record any BWC video. However, a BWC video recorded by PO Houston (PO Vicente’s partner) partially captured PO Vicente’s interactions with § 87(2)(b) at the 13th Precinct stationhouse (Board Review 09). (Note that PO Houston’s BWC video must be rotated 90 degrees clockwise to be viewed upright.) The van comes to a stop outside of the stationhouse at 5 minutes 12 seconds, and at 5 minutes 35 seconds, § 87(2)(b) sits at the edge of the van. Significant swelling is visible on her head and she complains that she feels dizzy. At 6 minutes 18 seconds, an unidentified male officer lifts her to her feet. Between 6 minutes 40 seconds and 7 minutes 5 seconds, that officer and PO Vicente walk § 87(2)(b) into the stationhouse. This BWC video does not capture PO Vicente saying “Get the fuck up” or “We’re used to this type of shit” as alleged.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint in which she was named as a victim in one allegation (Board Review 21):
 - § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 22).
- Captain Treubig has been a member of service for 17 years and has been a subject in three other complaints with nine allegations, none of which have been substantiated. § 87(2)(g)
- PO Agro has been a member of service for 12 years and has been a subject in five other complaints with ten allegations, none of which were substantiated. § 87(2)(g)
- PO Vicente has been a member of service for seven years and has been a subject in four other cases with seven allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming personal injuries and physical, emotional, and psychological pain and suffering resulting from assault and battery, false arrest, false imprisonment, and malicious prosecution (Board Review 23). This Notice of Claim seeks an unspecified dollar amount in redress. A 50H hearing was held on § 87(2)(b).
- As of August 19, 2021, the Office of the Comptroller had no record of any Notice of Claim filed by or on behalf of § 87(2)(b) regarding this incident (Board Review 24).
- According to the Office of Court Administration (OCA), neither § 87(2)(b) nor § 87(2)(b) has any history of convictions in New York City (Board Review 25 and 26).

Squad: 8

Investigator:	<u>Samuel Ross</u> Signature	<u>SI Samuel Ross</u> Print Title & Name	<u>12/27/2021</u> Date
Squad Leader:	<u>Ethan De Angelo</u> Signature	<u>IM Ethan De Angelo</u> Print Title & Name	<u>12/27/2021</u> Date
Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date